

# **NOTICE OF AVAILABILITY**

## **FOR THE EXCHANGE**

**OF**

**FORMER BELLMORE LOGISTICS ACTIVITY  
HEMPSTEAD, NEW YORK**

**Department of the Army**

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**\*\*\*Note: Developers will be subject to the terms and conditions of the attached draft appendices and should carefully review the documents before the submission of proposals. The final appendices will be substantially similar to those contained herein.**

## **A. INTRODUCTION**

The Department of the Army (hereinafter Army) is seeking to dispose of the former Bellmore Logistics Activity (hereinafter “Bellmore”), located in Hempstead, New York. The consideration being sought for this property will consist of construction of a fuel truck storage facility at Fort Drum, New York, and payment of monetary consideration to the Army in an amount necessary for the total consideration to equal the fair market value of Bellmore, as determined by the Army.

### **Legislative Authority**

Bellmore will be conveyed by quitclaim deed pursuant to the requirements of 10 U.S.C. § 2869 (See **Appendix 1**). This legislation permits the Army to enter into an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a Base Realignment and Closure (BRAC) Act to any person who agrees to carry out a military construction project in exchange for real property. The fair market value of the military construction project to be obtained by the Army must be at least equal to the fair market value of the property to be conveyed (hereinafter sometimes referred to as the “Exchange Parcel”). If the fair market value of the military construction is less than the fair market value of the Exchange Parcel, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

### **The Notice Process**

The Notice process established for this project is structured to ensure that the Government receives the best proposals from qualified and responsible developers, design-build firms, and other interested parties. The selection of the successful proposal (hereinafter referred to as the “Developer”) will be based on capabilities and qualifications, relevant experience, past and present performance, and achievement of Army goals. The Army’s intent is to quickly select a Developer and then enter into a period of exclusive negotiations with the selected Developer to finalize specific Army requirements. The Army intends to enter into an agreement (hereinafter referred to as the “Letter Agreement”) with the selected Developer establishing the value of the exchange property. The Letter Agreement will also establish a timeline for the exchange process, and obligates the parties to finalize an exchange agreement no later than November 30, 2004. (See sample Letter Agreement attached hereto as **Appendix 2**).

The specific business terms and legal conditions associated with the exchange will be negotiated and also documented in the formal Exchange Agreement, including a right of entry for access prior to transfer for development of the exchange parcel and date for closing and conveyance of the parcel. (see sample Exchange Agreement attached hereto as **Appendix 3**). Initial specific design criteria are provided at Appendix 3, Attachments A and B. Final design criteria will be negotiated prior to the commencement of construction. Interested parties can meet the requirements of this Notice with a proposal for construction, a description of the qualifications and experience of the team that will fund and satisfy the Government’s objective and documentation demonstrating the Developer’s financial capability/capacity to perform, as further identified herein

## **B. THE EXCHANGE PARCEL**

Bellmore consists of approximately 17 acres and 180,000 square feet of facilities located on Long Island, in the Town of Hempstead, County of Nassau, New York. It formerly provided maintenance and logistical support to Reserve Component units. The Army owns the property in fee simple subject to existing easements and restrictions of record. The property has utilities including a sanitary sewer system (2,845 linear feet (LF)), steam condensation lines (150 LF), water distribution system (5,875 LF), and electrical transformers (1,475 KV). See map at **Appendix 4**.

### **1. Existing Conditions**

All removal or remedial actions as required under the Comprehensive Environmental Response Compensation and Liability Act, 42 USC § 9601, et seq. (CERCLA) and necessary to protect human health and the environment have been taken for the property. In addition, all Department of Defense requirements to reach a Finding of Suitability to Transfer have been met and the appropriate Environmental Protection Provisions shall be included in the deed for the conveyance of the property.

Interested parties may request permission to perform a due diligence environmental site assessment: (1) prior to proposal submission; (2) after proposal submission; or (3) after designation as the selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by the Army after the execution of a Right of Entry Agreement (included in the Exchange Agreement) with standard insurance and indemnity provisions as required by the Army. Appendix 3, Attachment C provides a sample Right of Entry Agreement.

### **2. Local Reuse Plan**

The Developer will acquire title to approximately 17 acres of real property at Bellmore. The Town of Hempstead, in coordination with the North Bellmore Base Reuse Planning Group, developed a redevelopment plan for the property that includes a mix of single-family and senior dwellings. The Plan also includes a community recreation facility, which would include a community building with an indoor swimming pool, outdoor tennis courts and other outdoor recreation areas. The Developer is solely responsible for obtaining all necessary approvals for redevelopment of the site.

### **3. Site Information**

The property is located at 2755 Maple Avenue, on the north side of Maple Avenue and west of Oneida Avenue, within the unincorporated area of the Town of Hempstead known as North Bellmore. The site is generally flat and is surrounded by a neighborhood of detached single-family homes. The site is presently occupied by vacant low-rise military structures, including two (2) administration buildings, four (4) support structures and one (1) warehouse.

### **C. CONSIDERATION**

The Developer will pay the Army consideration in an amount not less than the fair-market value of the Exchange Parcel. As partial consideration for the Army's conveyance of the Exchange Parcel the selected developer shall construct a fuel truck storage building at Fort Drum, New York. The fuel truck storage facility shall be constructed consistent with Army standards and requirements. Appendix 3, Attachment A provides an initial Scope of Work. The full set of standards and requirements will be negotiated and formalized in the Exchange Agreement, prior to construction of the facility. Appendix 3, Attachment B is a copy of the military construction form (DD Form 1391) that provides additional information on the fuel truck storage facility project.

In addition to the construction of the fuel truck storage building, the selected Developer will also be required to pay monetary consideration for the Exchange Parcel. The value of the fuel truck storage building and the amount of the monetary consideration must equal the fair market value of the Exchange Parcel. Monetary consideration will be required in full to the Army upon conveyance of Bellmore by quitclaim deed to the developer.

### **D. PROPOSAL AND EVALUATION**

Interested parties responding to this Notice are requested to submit proposals organized and structured in conformance with the outline shown below. Proposals should be clear and concise, and provide only relevant material. Interested parties shall comply with applicable representations and complete all certification requirements set forth in **Appendix 5**.

Proposals will consist of two parts, a written proposal and an oral presentation.

Interested parties should submit an original and two copies of their written proposal to the Army at the following address:

U. S. Army Engineer District, New York  
Attn: Bill Johnson, M&D Branch, Real Estate Division, 26 Federal Plaza – Suite 1951  
New York, New York 10278-0090

#### **1. Proposal Submission Requirements**

##### **a. Assessment of Property Value**

Indicate the cash purchase price for the Exchange Parcel that you would be willing to pay to directly purchase the property.

##### **b. Project Approach**

Describe your approach to construction, implementation, and achieving this construction and exchange project. Place special emphasis on how your approach addresses the entire

project and how it demonstrates a clear understanding of the scope and complexity associated with the project. Your description should include a discussion of planned steps to meet the goals required for the projects. This discussion should include contract management practices that will ensure execution as designed.

c. Relevant Experience:

Provide the following information on projects for which you acted as prime developer. Identified projects must demonstrate an ability to perform a project of this magnitude.

- 1) List of the projects that you successfully completed or you have currently in progress covering the past ten (10) years.  
For each project listed above, include the following:
- 2) The name, address, type, cost (design and construction), and size (in gross square feet) of each project;
- 3) The name and address of the owner of each project;
- 4) No more than three (3) photos of each project (each photo not exceeding 8-1/2" by 11" in size);
- 5) A description of how the project achieved an acceptable level of quality in the project planning, creation, design, and construction;
- 6) The financial and transactional structure for each project
- 7) Your role and services provided for each project;
- 8) Other pertinent information to sufficiently describe each project.

d. Past and Present Performance

Provide the name, address, telephone and fax numbers of at least four (4) clients or other stakeholders for whom you have successfully developed projects within the past ten (10) years. In addition to clients, you are encouraged to provide the above information from other project stakeholders that you consider important to understanding the success of your work. These references should be able to assess the degree of client (or other stakeholder) satisfaction. The Army intends to contact all the references you list and your submission and/or inclusion of the information requested above will be considered authorization to do so. Some of the factors that contribute to client satisfaction and what your references may be asked to discuss in respect to you formally are as follows:

- 1) quality of the working relationship with the client (the tenant and/or owner);
- 2) professionalism and integrity with which you conducted business;

- 3) responsiveness to the client's needs and expectations;
  - 4) level of communication;
  - 5) value added to the project as the result of cost savings, favorable financing, positive asset management, etc.;
  - 6) delivery of the project within budget and on schedule;
  - 7) quality control of the project design and construction; and,
  - 8) other relevant aspects in the management of a project development for a client.
- e. Experience in Financing Institutional Projects and Financial Return Expectations  
(Note: All financial data clearly marked as 'PROPRIETARY' will be held in confidence)
- If you are a corporation or limited partnership, provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant. Also include a personal financial statement of the key owners/principals.
- If you are an individual or partnership, provide a complete and current personal financial statement for you and/or all partners.
- Describe financing arrangements you have structured for major projects within the past ten (10) years. Include information on fees and any participation in the equity or success of the development. Describe your financial commitment over the life of the project during both the initial financing and construction phases.
- Provide the names, addresses, telephone numbers, and e-mail of at least two commercial or institutional credit references from which you have previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Army.

## **2. Evaluation Factors**

An evaluation team will evaluate each proposal. The team will determine the overall value of the proposal to the Army and the potential for meeting the construction goals, in accordance with the evaluation factors stated below. Proposals will be evaluated on their own merit, independently and objectively, based upon the factors as identified as follows, listed in order of evaluation importance.



## Factors

### a. Proposed Value of Exchange Property

This factor considers the monetary consideration the applicant will pay for the property.

### b. Capability/Qualifications

This factor considers the extent of the applicant's capability and qualification to provide the services required for planning and implementation of the projects and the applicant's approach to the projects.

### c. Relevant Experience/Past and Present Performance

This factor considers the extent of the applicant's experience in successfully planning for and developing large complex projects, and their ability to construct a fuel truck storage building to the standards and specifications required by the Army.

### d. Experience in Financing Institutional Projects

This factor considers the extent of the applicant's experience in dealing with financing of large, complex projects, and considers whether the applicant has the actual ability to attain necessary funding to acquire the exchange parcel.

### e. Achievement of the Army Goals

This factor considers the extent to which the applicant's approach indicates an understanding of the Army's goals and a realistic approach to accomplishing them.

## **3. Schedule And Milestones**

Notice Issued	15 July 2004
Open Site Visit and Pre-Proposal Conference	13 August 2004
Responses Due	31 August 2004
Oral Presentations	1-14 September 2004
Selection of Developer	15 September 2004
Letter Agreement Executed	NLT 20 September 2004
Exchange Agreement Finalized	31 November 2004
Exchange Agreement Executed	NLT 15 December 2004
Quitclaim Deed Executed	NLT 15 December 2004

\* It is the intent of the Army to select a Developer no later than 15 September 2004; however the Army reserves the right to extend this time period in the event more time for review of the proposals is required. In the event the time period is extended, the Army will provide notice to each Developer.

#### **4. Instructions And Additional Information**

- a. Proposals must be submitted in sealed envelopes by:

DATE: 31 August 2004

TIME: 5:00 P. M.

LOCATION: U. S. Army Corps of Engineers, New York District  
Chief of the Real Estate Division, New York District  
Attn: Noreen Dean Dresser  
26 Federal Plaza, Suite 1951  
New York, New York 10278-0090

- b. Submissions should be sent in an envelope clearly marked "RESPONSE TO NOTICE OF AVAILABILITY FOR EXCHANGE BELLMORE LOGISTICAL FACILITY"
- c. Facsimile or electronic responses will not be considered.
- d. Written comments and questions regarding this Notice may be referred to:

US ARMY CORPS OF ENGINEERS DISTRICT NEW YORK  
ATTN: Noreen Dean Dresser  
Chief, Real Estate Division  
CENAN-RE  
26 Federal Plaza, Suite 2007  
New York, New York, 10278-00900

Phone Number: 917.790.8430

or

US ARMY CORPS OF ENGINEERS DISTRICT NEW YORK  
ATTN: William Johnson  
Chief, Management and Disposal Branch  
CENAN-RE  
26 Federal Plaza, Suite 2007  
New York, New York, 10278-00900

Phone Number: 917.790.8449

All comments and questions will be reviewed and referred to Government representatives for appropriate action. Individual responses may not be provided.

- e. An Open Site Visit and Pre-Proposal Conference will be held on 13 August, 2004 . The conference may include presentation by the Town of Hempstead of the community's preferred re-use plan, and will be held at 9:00 a.m. – 1:30 p.m. at the following location:

Hilton Long Island/Huntington  
598 Broad Hollow Road  
Melville, New York  
P # 631-845-1000

All interested parties are strongly encouraged to register using the registration form located on the Corps of Engineers Website: <http://www.usace.army.mil/>, or by calling Randy Williams at (917) 790-8453, no later than 1 August 2004.

## **F. SPECIAL CONDITIONS AND LIMITATIONS**

### **1. No Obligation**

While the Army intends to enter into an agreement with a Developer selected through this Notice process, it is under no obligation to do so. The Army reserves the right to cancel this Notice at any time, or to reject any and all submissions prepared in response. The Army is not responsible for any costs incurred in order to participate in this exchange process, including any "bid and proposal" costs.

### **2. Waiver**

The Army reserves the right to waive informalities and minor irregularities in offers received if it is determined that it is in its best interest of the Army to do so.

### **3. Protection Afforded To Sensitive Material**

Sensitive material submitted in response to this Notice may be afforded some protection from public disclosure consistent with the Government's obligations under the Freedom of Information Act 5 USC § 552. The provider should identify such information as proprietary with supporting justification, and request the withholding of such information. Each page that is considered proprietary must be clearly marked.

#### **4. Rights Reserved**

The Army reserves the right to hold exclusive negotiations with a selected Developer that may result in terms and conditions that may differ from the terms and conditions originally offered. Furthermore, the Army reserves the right to terminate negotiations with the selected Developer, and initiate negotiations with others if the Army determines that the Army will be unable to successfully conclude negotiations with the selected Developer.

#### **5. Hold Harmless**

By participating in this exchange process, Developers agree to hold the United States, its officers, employees and consultants harmless from all claims, liabilities and costs related to all aspects of this acquisition. Under no circumstances shall the Government be liable for any real estate brokerage commissions, finder's fees or other forms of compensation related in any way to activities undertaken by any person as a result of this acquisition.

#### **6. Federal Labor Laws**

The selected Developer, its contractors and subcontractors shall comply with the requirements of applicable Federal labor laws including, but not limited to, 40 U.S.C. §§ 3141-3148 and 40 U.S.C. § 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a et seq.) the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c)).

#### **7. Laws, Regulations and Requirements**

The selected Developers should comply with all relevant sections of the National Environmental Policy Act (NEPA) and its requirements for an environmental assessment (EA) or an environmental impact statement (EIS) as applicable to the Developer's plans for the structure at Fort Drum. Additionally, the selected Developer is responsible for being fully informed of, and complying with the requirements of all other applicable Federal and local government laws and regulations. Additionally, the successful Developer shall be responsible for obtaining, at its sole cost and expense, all requisite approvals, licenses and permits.

#### **8. Developer's Research Obligations**

The selected Developer is expected to be knowledgeable of all information, which is reasonably ascertainable concerning the size, character, quality, and quantity of surface and subsurface materials or obstacles on the site, as well as the existing utilities on the site. This information is available from: (1) a visual inspection of the site; (2) technical drawings and specifications which Army may provide; (3) utility companies serving the area; and (4) local land records. (The Army disclaims all responsibility and liability for the accuracy of any technical information that it provides)

Additionally, the selected Developer is expected to have knowledge of the conditions affecting construction on the site. This includes, but is not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to, and during prosecution of the work, and community support for the proposed development.

## **9. Environmental Matter**

All removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA Section 120(h)(3).

Interested Developers may request permission to perform a due diligence environmental site assessment: (1) prior to proposal submission; (2) after proposal submission; or (3) after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. The Army, subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions as required by the Army, will grant permission for site assessment.

## **10. Additional Financial Consideration to Army and Bonding Requirements** **In addition to the cost of construction at Fort Drum and the payment of fair market value for real property at Bellmore, the Army will typically require the following:**

### **A. Guaranty for Purchase of Exchange Parcel**

A Guaranty from a Guarantor (can be an irrevocable letter of credit from a national bank subject to jurisdiction of the FDIC) acceptable to Army in instances where a new entity or an entity with limited assets will be the selected Developer.

### **B. Performance Bond for Construction**

A performance bond is required for the construction and through the warranty period of the fuel truck storage building at Fort Drum, New York, and throughout the warranty period.

## **11. Inspection of Accounting Records**

The selected Developer shall permit Army, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records including certified financial statements of the selected Developer which are directly pertinent to the exchange. The Army shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records.

## **12. Army's Tax Exempt Status**

The selected Developer shall assume any taxes, assessments or impositions on the exchange or the real estate. In no event shall the selected Developer assert, or attempt to assert, for its own benefit, an exemption or immunity available to Army.

### **13. Army's Indemnification Requirements**

The Exchange Agreement, which is negotiated between the Army and the selected Developer, will require and provide that the selected Developer and its contractors and subcontractors shall:

(1) Indemnify and hold Army, its directors, officers, employees and agents, harmless from and against, all claims, liabilities, losses, demands, damages, penalties, costs, charges and expenses (including reasonable architect and attorneys' fees) which may be imposed upon, or incurred by, or asserted against, Army by reason of:

Any act or omission of the selected Developer, or any of its contractors, subcontractors, or mortgagee, which causes Army to be:

(a) joined in, or

(b) subjected to, any claims, suits, administrative proceedings or similar controversies, solely because of Army's fee ownership;

(2) Any accident, occurrence, injury to, or death of, persons or loss of, or damage to, property, occurring on or about the site, or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways;

(3) Any act, error or omission on the part of the selected Developer or any of its contractors, subcontractors, agents, servants, employees or licensees;

(4) Damage to any Army Improvement or Army Facility or to any Army property adjoining the sites; or

(5) Any of the foregoing events except such claims, liabilities, losses, etc., which may be imposed upon, or incurred by, or asserted against Army on account of Army's sole negligence.

The selected Developer shall require the foregoing indemnification to be provided by each of its general construction contractors and subcontractors.

### **14. Army's Insurance Requirements**

The Agreement that is negotiated between Army and the selected Developer will require the selected Developer, its contractors and subcontractors, to procure and maintain insurance coverage, in amounts determined by Army. This includes, but is not limited to: (1) Commercial General Liability; (2) Worker's Compensation; (3) Builder's Risk (during construction only); (4) Automobile Liability; (5) Contractors' Pollution Liability; (6) Railroad Protective Liability.

## **15. Assignment of Proposal or Withdrawal of Developer**

The selected Developer is designated because of the skills, experience, knowledge and financial standing of the Developer. A Developer who submits a proposal in response to this Notice may withdraw, assign its proposal or change the composition of its Developer's team as follows:

### **A. . Assignment of Proposal**

At any time prior to the designation of the selected Developer, a Developer may request Army's approval to assign its proposal to another development entity. No assignment is binding prior to the Army's written approval. The Developer and its successor shall submit all documents required by the Army before the request will be considered. The Army is under no obligation to consider the request. Any assignment may be subject to the requirement of a guaranty and such other conditions as the Army may require.

### **B. Withdrawal of Proposal**

At any time prior to the designation of the selected Developer, a Developer may elect to withdraw from having Army consider its proposal

## **16. Termination of Designation of Selected Developer**

The Army's Contracting Officer has the right, but not the obligation, to terminate the designation of the selected Developer for any of the following:

- A. The selected Developer fails to negotiate the final terms of the transaction after receipt of a thirty (30) day written notice from Army.
- B. The selected Developer fails to negotiate and execute the Exchange Agreement after receipt of a thirty (30) day written notice from Army.
- C. The selected Developer or any individual or entity holding ownership declares bankruptcy.
- D. The selected Developer assigns its designation or transfers its rights without the Army's prior written approval. Alternatively, the selected Developer requests the Army's approval of an assignment and the Army does not grant approval and the selected Developer refuses to proceed in accordance with its Proposal.
- E. The selected Developer is indicted for, or convicted of, a felony.
- F. The Army determines that the selected Developer does not have a satisfactory record of integrity and business ethics.
- G. The selected Developer provided incorrect or incomplete information in any of its submissions to the Army, as determined solely by the Army's Contracting Officer.

H. The selected Developer does not comply with this Notice, its Proposal or the terms of the Projects, including the time frames as stated herein.

I. The selected Developer conducts a due diligence environmental site assessment and modifies its Proposal as a result of this site assessment and due diligence in a manner that is unacceptable to the Army.

J. The Army determines that termination is in its best interest.

## **17. Other Provisions.**

A. No support or services, i.e., maintenance, entomology services, custodial, refuse collection or grounds maintenance will be provided to the facility to be constructed by Fort Drum unless agreed to as part of a separate contract for services.

B. All utilities will be provided and metered read by Fort Drum on a reimbursable basis. All utility meters shall be installed at the sole cost and expense of the developer.

C. Access to Fort Drum is restricted at all times and requires valid MIL/DOD-CIV ID or Driver's License, valid vehicle registration, state vehicle inspection, proof of insurance or DOD vehicle decal.

D. The selected Developer shall comply with all federal, state, local and Installation Commander laws, rules and regulations.



# ***Appendix 1.***

## ***Legislative Authority***

### **Title 10, United States Code**

#### **Section 2869 – Conveyance of property at military installations closed or realigned to support military construction**

(a) Conveyance authorized; consideration. The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a base closure law to any person who agrees, in exchange for the real property--

- (1) to carry out a military construction project or land acquisition; or
- (2) to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.

(b) Conditions on conveyance authority. The fair market value of the military construction, military family housing, or military unaccompanied housing to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the military construction, military family housing, or military unaccompanied housing is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) Pilot program for use of authority.

- (1) To the maximum extent practicable, the Secretary of each military department shall use the conveyance authority provided by subsection (a) at least once before December 31, 2004, for the purposes specified in such subsection.
- (2) The value of the consideration received by the Secretary concerned in a conveyance carried out under this subsection shall not be less than \$ 1,000,000.
- (3) In the case of the report required under subsection (f) to be submitted in 2005, the Secretary of Defense shall include the following:

- (A) A description of the conveyances carried out or proposed under this subsection.
  - (B) A description of the procedures utilized to enter into any agreements for the conveyance of property under this subsection.
  - (C) An assessment of the utility of such procedures for the disposal of property at military installations closed or realigned under the base closure laws, and for securing services described in subsection (a), including an assessment of any time saved and cost-savings achieved as a result of the use of the conveyance authority provided by this section.
  - (D) An assessment of private sector interest in the use of the conveyance authority provided by this section.
  - (E) A description of the projects for which the Secretary concerned considered using the conveyance authority provided by this section, but did not do so, and an explanation of the decision.
- (d) Advance notice of use of authority.
- (1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation closed or realigned under the base closure laws is to be conveyed by means of a public sale, the Secretary concerned may notify prospective purchasers that consideration for the property may be provided in the manner authorized by such subsection.
  - (2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—
    - (A) the Secretary submits to Congress notice of the conveyance, including the military construction activities, military family housing, or military unaccompanied housing to be obtained in exchange for the conveyance; and
    - (B) a period of 14 days expires beginning on the date on which the notice is submitted.
- (e) Deposit of funds. The Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.
- (f) Annual report. In the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall include a report detailing the following:

- (1)** The extent to which the Secretaries concerned used the authority provided by subsection (a) during the preceding fiscal year to convey real property in exchange for military construction and military housing, including the total value of the real property that was actually conveyed during such fiscal year using such authority and the total value of the military construction and military housing services obtained in exchange.
  - (2)** The plans for the use of such authority for the current fiscal year, the fiscal year covered by the budget, and the period covered by the current future-years defense program under section 221 of this title.
  - (3)** The current inventory of un conveyed lands at military installations closed or realigned under a base closure law.
- (g)** Description of property. The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.
- (h)** Additional terms and conditions. The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

## *Appendix 2.*

# ***SAMPLE LETTER AGREEMENT***

### **LETTER AGREEMENT**

BETWEEN  
THE UNITED STATES ARMY AND THE  
ENTITY

This Letter Agreement (LA) is made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the United States of America, acting by and through the Department of the Army, Office of the Assistant Secretary of the Army For Installation and Environment, and the ENTITY, Address hereinafter also referred to as the **Proponent**.

WHEREAS, Occasionally, the Department of the Army is asked by State or local officials or other non-Federal interests to divest itself of real property holdings through an exchange of real property,

WHEREAS, Subchapter III of chapter 169 of title 10, U.S.C. Section 2869, authorizes an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a base closure law to any person who agrees, in exchange for the real property--

(1) to carry out a military construction project or land acquisition; or

(2) to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.

WHEREAS, Proponent desires to have performed certain activities relative to the Government property known as the NAME so as to further facilitate the REASON FOR EXCHANGE.

Now Therefore:

### **1. PURPOSE AND INTENT**

a. The Parties acknowledge that this LA is in furtherance of good faith negotiations in contemplation of the conveyance of the Government property known as the NAME, STATE, in exchange for a new \_\_\_\_\_ at NAME, STATE.

b. The Parties intend that this LA constitutes a legally binding contract, notwithstanding that the Parties have not yet entered into the Exchange Agreement. The Parties acknowledge that neither Party has made a decision concerning the contemplated exchange and that the Parties

shall be obligated to proceed with the exchange only in the event the Parties execute a formal Exchange Agreement.

## **2. OBLIGATIONS OF THE PARTIES**

a. The Proponent is required to finalize an exchange agreement consistent with the proposal submitted in response to the Army's Notice of Availability and included at attachment A .

b. The Proponent agrees to finalize negotiations on the exchange agreement no later than November 30, 2004 and execute such agreement no later than December 15, 2004.

c. For purposes of upcoming negotiations the Proponent agrees that the value of the exchange parcel is \_\_\_\_\_.

## **3. MODIFICATION OR TERMINATION OF AGREEMENT**

a. The Proponent or the USAED, New York District shall have the option to terminate this agreement by giving written notice to the other party, specifying the effective date of the termination of work, at least ten (10) days before such effective date.

b. This LA contains the entire agreement between the parties regarding the negotiations of an exchange agreement for the exchange of certain United States owned land at the Bellmore Logistical Facility, New York, for Proponent's construction of a fuel truck storage facility at Fort Drum, New York, and any agreement hereafter made shall not operate to change, modify, or discharge this LA in whole or in part, unless that agreement is in writing and signed by the parties hereto.

c. This LA shall be in effect as of the date executed by both parties and shall remain in effect until an exchange of property is completed or by written notice by a party to the other.

## **4. DISPUTES**

a. This contract is subject to the Contract Disputes Act of 1978. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

c. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by the following paragraph. A voucher, invoice or other routine request for payment that is not in dispute when

submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to a liability or amount or is not acted upon in a reasonable time.

d. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer. For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of the Contractor's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

e. If the Contractor is an individual, the individual shall execute the certification. If the Contractor is not an individual, a senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs shall execute the certification.

f. For the Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date of which the decisions will be made.

g. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Office receives the claim (properly certified if required) or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.

i. The contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action arising under the contract and comply with any decision of the Contracting Officer who shall be Mr. Michael G. Barter, Chief, Real Estate Division, New York District.

## **5. NOTICES**

Notices pursuant to this LA will be sent by the parties to each other by U.S. Mail or by rapid courier (such as Federal Express) addressed to the following addresses, or such other addresses as the parties may from time to time designate to each other in writing.

**U.S. ARMY CORPS OF ENGINEERS**

ATTN: Noreen Dean Dresser  
26 Federal Plaza, Real Estate Division  
Room 2007  
NEW YORK, NEW YORK 10278

**PROPONENT**

BASED ON THE FOREGOING, the Parties hereto, acting by and through their duly authorized representatives, have executed this Letter Agreement as of the day and year first above written.

**THE UNITED STATES OF AMERICA**

**ENTITY, Address**

BY: \_\_\_\_\_ BY: \_\_\_\_\_

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

JOSEPH W. WHITAKER  
Deputy Assistant Secretary of Army  
(Installations and Housing) OASA (I&E)

**Attachment A**  
**Developer's Proposal**



# ***APPENDIX 3***

## ***Sample Exchange Agreement***

### **BELLMORE EXCHANGE AGREEMENT**

This Agreement entered into this \_\_\_\_\_ day of November 2004, by and between,

The UNITED STATES OF AMERICA, represented by the  
DEPARTMENT OF THE ARMY (the "Government"),

And

The EXCHANGE PARTNER, hereinafter referred to as \_\_\_\_\_.

WITNESSETH:

WHEREAS, the Government desires to have constructed a Fuel Storage facility at Fort Drum, by the EXCHANGE PARTNER, described in **Exhibit A**, Detailed Scope of Work

WHEREAS, the EXCHANGE PARTNER desires to acquire 16.32 $\pm$  acres of land, more or less, with improvements known as the Bellmore Logistics Facility, 2755 Maple Avenue, North Bellmore, Nassau County, New York, **Exhibit B**, owned in fee by the Government;

WHEREAS, authority for the Government to enter into this Agreement is found in Subchapter III of chapter 169 of Title 10, United States Code, Section 2869 et seq.;

WHEREAS, pursuant to Subchapter III of chapter 169 of Title 10, United States Code, Section 2869 et seq., the Secretary of Defense has delegated to the Department of the Army his authority to make such exchanges to support military construction; and

THEREFORE, in consideration of the benefits conferred, the mutual covenants and conditions contained herein, and the duties and obligations incurred, the parties hereto agree as follows:

#### **I. GENERAL PROVISIONS**

**A.** The terms and conditions of this Agreement and its attachments and exhibits apply to and bind the successors and assignees of the parties hereto.

**B.** All of the provisions of this Agreement and its attachments and exhibits shall survive the exchange of conveyances and military construction contemplated herein, and shall remain obligations of the parties hereto until satisfied.

C. The EXCHANGE PARTNER warrants that it has not employed or retained any person or selling agency to solicit or secure this Agreement or any contracts or obligations arising from this Agreement, upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement or require payment from the EXCHANGE PARTNER for the amount of such commission, percentage or contingent fee.

D. No member of or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

E. The Government may, by written notice to the EXCHANGE PARTNER terminate the right of EXCHANGE PARTNER to proceed under this Agreement if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by any agent or representative of EXCHANGE PARTNER, to any officer or employee of the Government with a view toward securing any contracts or obligations arising from this Agreement or securing favorable treatment with respect to the awarding or amending, of the making of any determinations with respect to the performing, of such contracts or obligations, provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative make such findings shall be in issue and may be reviewed in any court of competent jurisdiction.

F. Neither the EXCHANGE PARTNER nor its contractor(s) will discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

## II. ACKNOWLEDGMENTS

A. **Property Value.** The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement the subject property identified in Exhibit B herein to be valued at \_\_\_\_\_.

B. **Environmental Documentation.** The environmental documentation will include, but not necessarily be limited to, the following:

1. **Finding of Suitability to Transfer.** The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the Finding of Suitability to Transfer (FOST) for the Bellmore Logistics Facility. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit** \_\_\_\_.

2. **Environmental Assessment.** The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the

Environmental Assessment (EA), for the Bellmore Logistics Facility. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit** \_\_\_\_.

**C. Land Surveys and Legal Descriptions.** The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the surveys and legal descriptions completed for the Bellmore Logistics Facility. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibits** \_\_\_\_, & \_\_\_\_.

**D. National Historic Preservation Act (NHPA).** The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement the NHPA documentation completed for the Bellmore Logistics Facility. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit** \_\_\_\_.

### **III. OBLIGATIONS OF THE EXCHANGE PARTNER**

**A.** EXCHANGE PARTNER shall construct the fuel storage facility at Fort Drum at no cost to the Government of a value not less than \$1,500,000.

**B.** EXCHANGE PARTNER shall comply with the Army Design Criteria and Quality Standards manual, unless otherwise specifically agreed to herein this Agreement.

**C.** EXCHANGE PARTNER, shall at its expense, complete the necessary preliminary requirements and prepare and obtain such outgrants (right-of-entry's, license, etc.) for the use of the properties. The Government will not unreasonably deny any appropriate request for use of Government Property for such purposes. Outgrants will be issued by the appropriate authorities in accordance with AR 405-80.

**D.** EXCHANGE PARTNER has executed a separate Letter Agreement (LA), to reimburse USAED, New York for administrative costs associated with the transaction, including but not limited to, costs related to negotiation and review of this Agreement, engineering services and real estate actions.

**E.** EXCHANGE PARTNER has provided, at its expense, all consultation on behalf of the Government required under Section 106, NHPA, as implemented in 36 C.F.R. Section 800.

**F.** EXCHANGE PARTNER shall pay all costs required to accomplish obligations of EXCHANGE PARTNER and pay all associated survey, recording, escrow, and closing fees.

**G.** EXCHANGE PARTNER shall cooperate with the Government and pertinent regulatory agencies regarding any potential use covenants or restrictions for placement in the deeds of conveyance, that may be necessary to comply with CERCLA (42 U.S.C. 9601 et. seq.), as amended, and other applicable environmental laws.

**H.** EXCHANGE PARTNER shall obtain all necessary permits, licenses, services, and any and all approvals, at its own risk and expense, to accomplish the work under this section. This includes applying for and satisfying all requirements for a license or construction permit on

Government Property as required in Federal (including Army) regulations. EXCHANGE PARTNER shall own and be responsible for all materials, equipment and personnel used in conjunction with the construction on Government property until such time as ownership is conveyed in accordance with this Agreement. Construction shall conform to all applicable local, state and Government standards. Approval of EXCHANGE PARTNER's draft Description of Real Property Improvements and final Construction Documents (plans, drawings, specifications and permits to construct) will not constitute Government's acceptance of risk of or responsibility for such conformance unless explicitly included in this document.

**I.** The rights and obligations of EXCHANGE PARTNER in the contract(s), including all attachments thereto, to acquire land and build a structure suitable to the Government's needs, shall be deemed to be incorporated in this Agreement when fully executed between EXCHANGE PARTNER and the obligors and all benefits, rights, title and interest in said contract or contracts shall inure to the benefit of the Government. Said agreement shall provide that the Fuel Storage Facility shall be completed no later than \_\_\_\_\_ days after the execution date of this Agreement. Said time shall be expressed in the construction contract as a day certain based on these time lines and shall provide that time is of the essence.

**J.** The Government shall have the right to approve in writing the final Construction Documents as soon after they are prepared by EXCHANGE PARTNER, but in no event later than prior to their incorporation in the contract for construction. Further, at all times during and after construction, the Government shall have the right to enter upon the premises, from time to time, to determine compliance with said final Construction Documents, with the intent that the facilities will be constructed in a manner which complies with the standards of the Government regarding such, in order to allow the Government to accept such structures as hereinafter provided. Further, EXCHANGE PARTNER shall furnish any change or modification to the final Construction Documents to the Government in writing, and obtain written Government approval prior to commencement of construction.

**K.** EXCHANGE PARTNER shall, by separate Letter Agreement(s), executed simultaneously with this Agreement, provide the Government with funds sufficient to cover administrative costs associated with the construction of the Fuel Storage Facility, including but not limited to, the design and construction monitoring, as set forth in the Letter Agreement, **Exhibit \_\_\_\_**.

**L. Warranties**

**1.** EXCHANGE PARTNER shall, after completion of all improvements to the land, and in addition to any other warranties set forth elsewhere in this Agreement, furnish the Government a one (1) year warranty that the work performed and facilities built, materials and equipment installed by EXCHANGE PARTNER, its contractor(s), its sub-contractors(s), or supplier(s) performing work on said project at the request of EXCHANGE PARTNER, conforms to the final Construction Documents and overall design of said project. This warranty shall continue for a period of one (1) year from the date of the Government's final acceptance of the work. The Contracting Officer will notify the EXCHANGE PARTNER in writing, within thirty (30) days of discovery of any failure, damage or defect in equipment or material furnished. If

EXCHANGE PARTNER fails to remedy any failure, damage or defect within thirty (30) days after receipt of said notice, the Government shall have the right to repair, replace or otherwise remedy the failure, defect damage, and the EXCHANGE PARTNER shall reimburse the Government within thirty (30) days of said repairs or replacements.

**2.** The EXCHANGE PARTNER shall remedy at the EXCHANGE PARTNER'S expense any failure to conform, or any defect. In addition, the EXCHANGE PARTNER shall remedy at the EXCHANGE PARTNER'S expense any damage to Government-owned or controlled real or personal property, when that damage is the result of (a) the EXCHANGE PARTNER'S, its contractor(s), or subcontractor(s) failure to conform to the final Construction Documents as set forth herein or (b) any defect of equipment, material or workmanship furnished by the EXCHANGE PARTNER, its contractor(s) or subcontractor(s).

**3.** The EXCHANGE PARTNER shall restore any real property damaged in fulfilling the terms and conditions of the warranties set forth herein.

**4.** The EXCHANGE PARTNER'S warranty with respect to repairs shall run for one (1) year from the date of repair or replacement.

**5.** The warranties set forth herein shall not limit the Government's rights with respect to latent defects, gross mistake or fraud.

**6.** The Government's monitoring does not relieve the EXCHANGE PARTNER from the requirements set forth in the final Construction Documents, and the Government's acceptance of said construction does not constitute acknowledgement or acceptance of any item(s) of the construction that do not conform to the final Construction Documents without the Government's written authorization as stated in Paragraph O of this section.

**M.** Further, EXCHANGE PARTNER shall furnish to the Government, upon completion of the Fuel Storage Facility, all operator manuals supplied by the manufacturer, to any system installed in, on or around said structure.

**N.** EXCHANGE PARTNER hereby assigns to the Government any warranties given to EXCHANGE PARTNER by its contractor(s) or its subcontractor(s).

**O.** EXCHANGE PARTNER shall, upon transfer upon completion of the Fuel Storage Facility, furnish the Government a complete set(s) of original marked up final Construction Documents showing "as-built" conditions.

**P.** Prior to the commencement of construction, EXCHANGE PARTNER shall require each contractor to furnish it with a certificate of insurance, naming the Government as an additionally insured, with minimum limits of bodily injury and property damage as follows:

- (1) \$300,000 for each individual;
- (2) \$1,500,000 for each incident involving bodily injury;
- (3) \$500,000 aggregate for all property damage that may be incurred during the term of the policy;
- (4) \$1,500,000 comprehensive general liability umbrella;
- (5) \$3,000,000 builder's risk insurance.

Prior to construction, EXCHANGE PARTNER shall furnish the certificate of insurance to the Government.

**Q.** EXCHANGE PARTNER shall provide, at its expense, utility line connections, replacement or relocations of existing utilities and pay any and all tapping and connection fees related thereto.

**R.** EXCHANGE PARTNER shall be responsible for all costs of whatever kind or nature, contemplated or not, associated with this Agreement, whether or not they are otherwise specifically provided for herein.

**S.** The Government shall at its sole discretion determine whether the Fuel Storage Facility is acceptable for operation under the guidelines provided by Federal law and Army regulations. However, the Government's acceptance of the land and improvements shall not be unreasonably withheld.

**AA.** The delivery of the Quitclaim Deed to the EXCHANGE PARTNER for the Government property and acceptance of the Fuel storage Facility, shall be deemed full performance by the Government of its obligations hereunder with regard to the Government property conveyed.

#### IV. OBLIGATIONS OF THE GOVERNMENT

**A.** The Government will provide EXCHANGE PARTNER with access to all historical and environmental data for the Government Property consistent with applicable law and regulation. If any such data has been marked as "For Official Use Only", the Commander USAED, New York, or his or her delegate will coordinate with the appropriate record custodian for release to EXCHANGE PARTNER for use related to this Agreement. EXCHANGE PARTNER agrees that, to the extent permitted by New York law, use of any such data will be used solely for the purposes of this exchange action and that no data will be disclosed outside of EXCHANGE PARTNER or its environmental contractors, or consultants, if any, without the express written permission of the record custodian.

**B.** The Government will not unreasonably delay acceptance of the Fuel Storage Facility because of incidental items of a minor nature which remain to be completed and which would not unduly delay occupancy and use of such building for the purpose for which it is intended.

**C.** The Government will, within thirty (30) days of acceptance of the Fuel Storage Facility by the Government, convey by Quitclaim Deed, draft of which is attached as **Exhibit \_\_**, the Government's interest to the 16.32± acres, more or less, free and clear of all encumbrances and special assessments which are a lien against said land and improvements, subject to existing easement(s) for public roads and highways, utilities, railroads and pipelines. EXCHANGE PARTNER acknowledges the attached Exhibit as a Draft and is subject to change to accommodate changes in local, state or federal standards. Upon conveyance of the Government property to the EXCHANGE PARTNER as provided herein, the Government shall have no responsibility for the provision of police, fire, emergency medical services, trash pick-up, road maintenance, utility services or any other maintenance or other municipal type services to said property.

**D.** All of the Government property is conveyed under this Agreement in an “as is”, “where is,” condition, without any representation or warranty whatsoever by the Government or its agents concerning the state of repair or condition of said property, except as may otherwise be specifically provided hereunder or within the deed of conveyance.

## V. MUTUAL OBLIGATIONS

**A.** Upon execution of this Agreement by the Government and the EXCHANGE PARTNER the Government shall provide notice of the proposed exchange to the US Congress, pursuant to Subchapter III of chapter 169 of Title 10, United States Code, Section 2869 et seq. The Government may consult with EXCHANGE PARTNER in advance of delivering the notice.

**B.** The parties agree to immediately notify each other of any significant change in community sentiment or opposition to the proposed exchange by local, state or Federal Government officials.

**C.** Should retrocession of legislative jurisdiction be required for the property to be conveyed by the Government, both parties agree to make all efforts necessary to effectuate such retrocession.

**D.** EXCHANGE PARTNER, its contractors, and subcontractors shall comply with the requirements of the Davis-Bacon Act, Federal Acquisition Regulation (FAR) Section 52.222-6.

**E.** The Government will issue to EXCHANGE PARTNER a Right of Entry, **Exhibit \_\_**, for construction and access to perform its due-diligence. The Right of Entry will provide EXCHANGE PARTNER, its contractors, its sub-contractors, or any other entity performing work on the Fuel Storage Facility project or due-diligence at Bellmore.

## **VI. DISPUTES**

**A.** This contract is subject to the Contract Disputes Act of 1978, as amended. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

**B.** "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

**C.** A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the EXCHANGE PARTNER seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by the following paragraph. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to a liability or amount or is not acted upon in a reasonable time.

**D.** A claim by the EXCHANGE PARTNER shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the EXCHANGE PARTNER shall be subject to a written decision by the Contracting Officer. For EXCHANGE PARTNER claims exceeding \$100,000, the EXCHANGE PARTNER shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of the EXCHANGE PARTNER's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the EXCHANGE PARTNER believes the Government is liable.

**E.** If the EXCHANGE PARTNER is an individual, the individual shall execute the certification. If the EXCHANGE PARTNER is not an individual, the certification shall be executed by a senior company official in charge at the EXCHANGE PARTNER's plant or location involved or an officer or general partner of the EXCHANGE PARTNER having overall responsibility for the conduct of the EXCHANGE PARTNER's affairs.

**F.** For the EXCHANGE PARTNER claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the EXCHANGE PARTNER, render a decision within 60 days of the request. For EXCHANGE PARTNER certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the EXCHANGE PARTNER of the date of which the decisions will be made.

**G.** The Contracting Officer's decision shall be final unless the EXCHANGE PARTNER appeals or files a suit as provided in the Act.

**H.** The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Office receives the claim (property certified if required) or (2) the date



payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.

**I.** The EXCHANGE PARTNER shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action arising under the contract and comply with any decision of the Contracting Officer or District Engineer, U.S. Army Engineer District, Louisville, Kentucky.

## **VII. MISCELLANEOUS PROVISIONS**

**A.** This Agreement may be amended by written mutual consent of the parties.

**B.** Nothing contained in this Agreement will make or will be construed to make the parties hereto partners or joint venturers with each other nor be construed to render either of the parties hereto liable to any third party for debts or obligations of the other party hereto.

**C.** The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or a relinquishment of that party's rights to future performance of any such term(s), covenants, or conditions by the other party.

**D.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neutral gender, will include all other genders.

**E.** EXCHANGE PARTNER may not transfer or assign its rights and interests in and under this Agreement without the written consent of the Government. The covenants, agreements, rights, and responsibilities contained in this Agreement inure to the benefit of and are binding upon the parties hereto, their successors, and assigns. Nothing in this Agreement shall be construed as creating any rights of enforcement against any persons or entities that are not a party hereto, nor shall this agreement be construed as creating any rights, interest, or third party beneficiary status for any persons or entities not a signatory to this Agreement.

**F.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void then both parties shall be relieved of any obligations under that provision. Notwithstanding such a finding, this Agreement shall remain in full force and effect and be binding on the parties hereto as to the remaining terms to the fullest extent permitted by law.

**G. Notices.** A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and, (1) in the case of the Government, is addressed to:

U.S. Army Corps of Engineers  
New York District

Attn: Chief, Real Estate Division  
26 Federal Plaza, Suite 2007  
New York, New York, 10278-0090

and, (2) in the case of the EXCHANGE PARTNER, is addressed to:

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or such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other party as provided in this Section.

### **VIII. ANTI-DEFICIENCY ACT**

Should it be construed that the Government shall have been obligated under this Agreement to pay or reimburse any money hereunder, nothing in this Agreement shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, as amended.

**IX.** The effective date of this Agreement shall be the date on which this Agreement has been signed by the Deputy Assistant Secretary of the Army.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date subscribed opposite their respective names.

#### **EXCHANGE PARTNER, CITY, STATE**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
(TYPED NAME)  
TITLE: \_\_\_\_\_

#### **UNITED STATES OF AMERICA DEPARTMENT OF THE ARMY**

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
JOSEPH W. WHITAKER  
Deputy Assistant Secretary of Army  
(Installations and Housing) OASA (I&E)

“BELOW ARE THE RECOMMENDED EXHIBITS FOR EACH EXCHANGE AGREEMENT”

# ***Attachment A***

## ***Detailed Scope of Work***

### **COVER FUEL TRUCK STORAGE BUILDING**

Work Order #CE 00005-3J

#### **DETAILED SCOPE OF WORK**

##### **GENERAL NOTES**

1. In general, the guidance and requirements listed and/or mandated in the following documents shall be incorporated into the design of this facility:

UFC 3-600-01, 17 April 2003

Unifies Facilities Criteria, Fire Protection Engineering For Facilities

MIL-HDBK-1022A, 01 November 1999

Military Handbook, DOD, Petroleum Fuel Facilities

NEC, National Electrical Code,

NFPA 101, Life Safety Code

2. All equipment and wiring must meet Class I Division II requirements per NEC Article 513 (explosion-proof). For this project, this means that all equipment and wiring within 18" of the floor of the fuel truck storage bays will be explosion-proof. Any other equipment or wiring above 18" of the floor will not be explosion-proof. No equipment or wiring within the Mechanical/Electrical room will be explosion-proof.

##### **SITE WORK**

1. All materials that may be required for borrow or fill must be purchased and imported to this site. There is no "borrow pit" available at the Fort Drum Military Installation for borrow or fill material for this project.

2. All excess material that may need to be wasted or spoiled from this site must be removed and legally disposed of off the Fort Drum Military Installation. There is no waste site available for excess material for this project.

3. Provide and install all silt fence and erosion control as required. Remove upon completion.
4. Remove and salvage existing chain link fence, electric gate and associated operator. Reinstall salvaged chain link fence, gate and associated operator, supplement new as required to complete new layout configuration.
5. Strip existing topsoil. Salvage and stockpile for re-use.
6. Provide all clearing and grubbing as required.
7. Provide all general excavation for cuts and fills as required to provide positive drainage away from proposed construction, and to obtain gradual grades that are mowable by Fort Drum lawn maintenance department.
8. Provide all excavation and backfill associated with footings and 5'-0 high frost wall foundations for a 120'-0 x 120'-0 building. Maintain a 4'-0 minimum coverage from bottom of footings for protection from frost.
9. Provide, import, place, backfill, compact and fine grade 12" crushed stone sub-base below 8" concrete floor slab. Floor slab will have a 1/8"-per-foot slope from perimeter towards an 80'-0 long central trench drain.
10. Provide excavation and backfill associated with interior cast-in-place trench drain. Trench drain to be 80'-0 long and centrally located. Interior dimensions of trench drain will be 12" wide with a minimum interior depth of 12", pitched towards the outlet at 1/8" per foot, and a maximum interior depth of 22".
11. Provide trench excavation and backfill as required for column base tie reinforcing and associated thickened slabs. Trenching will run across the building at each column line.
12. Provide excavation and backfill associated with pipe bollards. Bollards will be located one at the interior and one at the exterior of each overhead doorjamb for a total of eight (8).
13. Provide, place, backfill and compact 12" crushed stone sub-base at all paved drives.
14. Provide all excavation and backfill associated with electrical service from existing transformer to Mechanical/Electrical room at south corner of building. Provide open cut excavations at existing asphalt pavement. Power service will come from Transformer #2 (transformer closest to Hangar Access Drive).
15. Provide excavation, backfill, compaction and new 8" ductile iron water line associated with new sprinkler system. New water line to run most direct route from existing 8" fire protection line, and will be stubbed up, flanged and capped off within new Mechanical/Electrical room at south corner of the building.

16. Provide excavation, backfill and compaction associated with new propane tank pad at east corner of building and for propane gas piping running to Mechanical/Electrical room at south corner of building. Propane piping will be by mechanical sub-contractor. Provide, place and compact 12" crushed stone sub-base below propane tank.
17. Provide excavation, backfill and compaction associated with underground 15,000-gallon pre-cast concrete fuel containment tank and associated drain piping.
18. Provide and install underground pre-cast concrete containment tank and associated 6" PVC drain piping from interior trench drain. Drain piping to have gasketed fittings. Tank to be located at east corner of building exterior.
19. Provide asphalt paved drive at front and back of building in configuration as shown. Pavement to be NSDOT Standard Mix: 1 1/2" top course mix type 7F and 2 1/2" binder base course type 3.
20. Place and grade existing salvaged topsoil. Supplement with additional as required to obtain a minimum of 4" of topsoil.
21. Seed and mulch all disturbed lawn areas.
22. Provide all proctor testing of imported materials and compaction testing of in place materials.
23. Provide all testing of installed water lines, and the drain line from interior trench drain to exterior containment tank.

## CONCRETE

Provide and install forming, reinforcing and cast in place concrete for footings, piers, walls and slab-on-grade as follows:

1. Form, reinforce and cast in place column pier footings as required. Concrete to be 4500 psi.
2. Form, reinforce and cast in place wall footings as required. Concrete to be 4500 psi.
3. Form, reinforce and cast in place column piers as required. Concrete to be 4500 psi.
4. Form, reinforce and cast in place 4' high frost walls as required. Concrete to be 4500 psi.

5. Form, reinforce, place and finish 8" concrete slab-on-grade. Reinforcing to be mesh. Concrete to be 5000 psi. Top of slab to have 1/8"-per-foot slope from outside edges towards central trench drain. Slab to have steel trowel finish.
6. Top of slab-on-grade at exterior perimeter and top of wall to be at the same elevation. No perimeter curb is required or included.
7. Thicken concrete floor slab as may be required for column line cross ties.
8. Form, reinforce and cast in place central trench drain. Concrete to be 4500 psi. Floor and walls of trench drain to be 8" thick with #4 reinforcing steel at 12" on center each way. Trench drain to be 80'-0 long and centrally located. Interior dimensions of trench drain will be 12" wide with a minimum interior depth of 12" at the high end, pitched towards the outlet at 1/8" per foot, with a maximum interior depth of 22" at the low end.
9. Form and cast in place bollard bases using 12" dia. x 4'-0 long "Sono-tube" forms. Pipe bollards to be filled with concrete.
10. Form, reinforce, place and finish, concrete slab for propane tank. Pad to be reinforced using 1 mat of #4 reinforcing steel. Concrete to be 4500 psi with a broom finish.
11. Provide concrete testing.

## METALS

1. Provide and install (12) 8" diameter schedule 40 pipe bollards, 8'-0 long.
2. Provide and install galvanized angle iron frame for trench drain. Provide with "mud hooks" to allow for cast into concrete slab. Interior dimensions of trench drain to be 12" wide x 80'-0 long.
3. Provide and install trench drain grating for above. Grating to be 1 3/4" x 3/8" heavy duty bar grating 22w4 with 1 3/8" bearing bar spacing, 4" cross bar spacing, H20 loading, banded ends and hot dipped galvanized. Provide additional width and length to allow for cast in place angle iron frame.

## WOOD AND PLASTICS

1. Provide and install 1 layer of 3/4" CDX plywood on deck above Mechanical/Electrical room.
2. Provide and install miscellaneous blocking as required.

## THERMAL AND MOISTURE CONTROL

1. Provide and install 2" rigid insulation at interior perimeter of frost wall. Insulation to be installed continuous from top of footing to bottom of slab.

2. Provide and install 1" rigid insulation throughout the under-slab area. Required for in-slab heating system.
3. Provide and install 1 continuous layer of 6 mil poly vapor barrier below slab on grade.
4. Provide and install R-19 batt insulation at all walls.
5. Provide and install R-38 batt insulation at all ceilings.
6. Provide and install 6 mil poly vapor barrier at walls and ceiling of Mechanical/Electrical room.

#### DOORS, WINDOWS & GLASS

1. Provide and install the following at each of four (4) exterior door openings:
  - a. 3070 16 ga, primed & painted, metal insulated doorframe with silencers.
  - b. 1 ½ pr NRP chrome hinges.
  - c. Panic device.
  - d. Door closer.
  - e. Threshold, weather stripping, door sweep.
2. Provide and install (2) insulated sectional overhead doors 20'-0 wide by 12'-0 high with electric operators with chain hoist as follows:
  - a. Doors to be provided prime painted. Custom color to match Fort Drum Architectural theme will be obtained by field painting.
  - b. Doors will have windows.
  - c. Doors to be series 591 "Thermacore" sectional doors as manufactured by the Overhead Door Corporation.
  - d. Operators to be JST series operators as provided by the Overhead Door Corporation.



## **FINISHES**

1. Construct (per bldg) Mechanical/Electrical room approximately 15'x10'x10' high.
  - a. Provide and install metal stud framing for perimeter walls and ceiling of Mechanical/Electrical room.
  - b. Provide and install 2 layers of 5/8" Fire code gypsum drywall at interior walls of Mechanical/Electrical room.
  - c. Provide and install 1 layer of 5/8" Fire code gypsum drywall at exterior walls of Mechanical/Electrical room.
  - d. Tape, sand and finish exposed gypsum drywall surfaces.
2. Provide and apply finish painting as follows:
  - a. Apply concrete sealer finish at slab-on-grade floors.
  - b. Prepare and paint 4 each exterior doors and frames.
  - c. Prepare and paint 8 each pipe bollards.
  - d. Prepare and paint caution marking yellow and black 4" diagonal lines at the bottom panel of both overhead doors.
  - e. Prepare and paint (2) 20' wide x 12' high overhead doors.
  - f. Prepare and paint gypsum walls and ceiling of Mechanical/Electrical room.
  - g. Exclude all painting of exposed fire suppression piping, hangars and associated equipment.

## **SPECIAL CONSTRUCTION**

Design, provide and erect (1) 120'-0 wide (span) x 120'-0 long pre-engineered steel building as manufactured by Chief Buildings or equivalent.

1. Design loads to be 70 psf ground snow load, 20 psf roof live load and 100 mph wind load.
2. Building width to be 120'-0 clear span (no interior columns). Building dimension width to be 120'-0 to outside face of concrete foundation.
3. Building length to be 120'-0 long with six (6) column bays at 20'-0 spacing. Building dimension length to be 120'-0 to outside face of concrete foundation.
4. Building eave height to be 14'-0 minimum.
5. There will be no window openings.

6. Metal Roofing: Roof panel is to be MBCI 16" batten Lok, 24 ga., signature 300 Kynar custom color.
7. Metal Siding: Wall panel is 16" MBCI classic Series, 22 ga., signature 300 Kynar custom color.
8. Provide for overhead door openings 20'-0" wide x 12' high.
9. Provide framed openings for (4) 3'-0" x 7'-0" man doors.
10. Roof pitch to be minimum per manufacturer.
11. Provide and install R-38 roof insulation. Roof insulation system to consist of 1" white steel banding, 8 inch faced fiberglass insulation, and 4" unfaced insulation.
12. Provide and install R-19 wall insulation. Wall insulation system to consist of 6 inch faced fiberglass insulation.
13. Interior of walls and roof shall be covered with a liner panel, standard with the building manufacturer.

## FIRE SUPPRESSION

Provide complete design/build services to design, provide and install a water-foam fire suppression system. System is designed based on the following criteria items:

1. Building is heated with a design factor of 55 degrees.
2. System to be designed and stamped drawings provided by a licensed engineer.
3. System to be a pre-action, dry pipe system.
4. The fuel hazard will be J-P8 aircraft fuel and diesel fuel.
5. A reserve supply of AFF concentrate is to be provided, equivalent in amount to the primary supply.
6. The proposed building is designed to house eight (8) 10,000-gallon fuel trucks.
7. All equipment and wiring must meet Class I Division II requirements per NEC Article 513 (explosion-proof). See General Note #2.
8. The fire alarm signal will be sent via a MONOCO transceiver. Provide complete MONOCO system with transceiver and associated equipment.

Fire suppression system scope of work is as outlined below:

Includes design and installation of a 3% AFFF closed head sprinkler system. The system will be hydraulically designed to discharge a density of .16 gpm over any 5,000 sf with a ten-minute duration of 3 % AFFF as required by NFPA pamphlet #16. One-half-inch (½”) orifice sprinklers will be utilized, spaced at maximum of 100 sf. It has been assumed that an ample water supply will be available at the new fire service into the building. This system will require approximately 1,400 gpm at a residual pressure of 60 psi.

## MECHANICAL

1. Building will be insulated and heated.
2. Design and provide in-slab radiant floor heating system with all related combustion boilers, pex tubing, manifolds, thermostat, (1) zone, boiler controls, hot water pumps and related copper piping within the boiler system.
3. All equipment and wiring must meet Class I Division II requirements per NEC Article 513 (explosion-proof). See General Note #2.
4. Provide and install exhaust fans, one (1) located at each gable end of the building. Exhaust system shall consist of two (2) wall propeller fans with wall sleeve, motor side guard, gravity damper and disconnect switch. These fans will be sized to provide six (6) air changes per hour with both fans running. Each fan will be capable of exhausting 13,320 cfm @ .25” sp each. These fans will include carbon monoxide sensors (3 sensors per fan) that will energize the fans upon high level of carbon monoxide, as well as a manual override.
5. Provide and install two (2) combination louver/motorized damper units for fresh air intake. This will provide for make-up air for the exhaust fans should all the doors be closed.
6. Provide and install associated piping at Mechanical/Electrical room. Propane gas piping to run underground at the exterior of the building, from the propane pad at the east corner of the building to the new Mechanical/Electrical room. Excavation and backfill to be performed by site work sub-contractor. Propane tanks to be provided and installed by the Government’s gas supplier.

## **ELECTRICAL**

1. All equipment and wiring must meet Class I Division II requirements per NEC Article 513 (explosion-proof). See General Note #2.
2. Provide and install electrical service from existing transformer to Mechanical/ Electrical room at corner of each building. Power will come from Transformer #2 (transformer closest to Hangar Access Drive). Service to be 200 amp, 3-phase 4 wire, 120/208 volt.
3. Provide and install power supply wiring to two (2) exhaust fans at gable end of building.
4. Provide and install power supply wiring for propane gas boilers within Mechanical/ Electrical rooms.
5. Provide and install power wiring for (2) overhead door operators.
6. Provide and install outlets for trucks at outer walls, 1 at each bay on each side.
7. Provide and install 2 each outlets at interior walls of Mechanical room.
8. Provide and install metal halide lighting similar to that installed in Hangar P-2049. Provide and install associated non explosion-proof switching. Interior lighting shall be provided such that 7-10 fc is obtained at working height.
9. Provide and install lighting and switch at Mechanical/Electrical room.
10. Provide and install lightning protection system for the structure and establish a ground counterpoise system for connection to the lightning protection system. The lightning protection system shall be designed and stamped by a qualified and certified "lightning protection specialist".
11. Provide and install power and control wiring associated with the fire suppression system.
12. The fire suppression alarm panel shall be tied to the fire department. The fire alarm signal will be sent via a MONOCO transceiver. Provide complete installation of MONOCO system with transceiver and associated equipment. There will be one panel controlling both buildings.
13. Provide and install emergency lighting and exit lighting.

# Attachment B

## Military Construction Form (DD Form 1391)

1. COMPONENT  ARMY		FY 2004 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 MAR 2004 02 MAR 2004	
3. INSTALLATION AND LOCATION Fort Drum New York			4. PROJECT TITLE Fuel Truck Storage Building		
5. PROGRAM ELEMENT	6. CATEGORY CODE 442 63	7. PROJECT NUMBER 61911	8. PROJECT COST (\$000) 1,450		
9. COST ESTIMATES					
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)	
PRIMARY FACILITY				936	
Vehicle Storage Building, Installation	SF	14,400	65.00	(936)	
SUPPORTING FACILITIES				323	
Electric Service	LS	--	--	(60)	
Water, Sewer, Gas	LS	--	--	(60)	
Paving, Walks, Curbs And Gutters	LS	--	--	(40)	
Storm Drainage	LS	--	--	(39)	
Site Imp(104) Demo()	LS	--	--	(104)	
Antiterrorism/Force Protection	LS	--	--	(20)	
ESTIMATED CONTRACT COST				1,259	
CONTINGENCY PERCENT (5.00%)				63	
SUBTOTAL				1,322	
SUPERVISION, INSPECTION & OVERHEAD (5.70%)				75	
DESIGN/BUILD - DESIGN COST (4.0000%)				53	
TOTAL REQUEST				1,450	
TOTAL REQUEST (ROUNDED)				1,450	
INSTALLED BQT-OTHER APPROPRIATIONS				(0)	
10. Description of Proposed Construction Construct an enclosed heated fuel truck storage building to include lighting, trench drains with underground pre-cast concrete fuel containment tank, overhead garage doors, and pre-action fire sprinkler system. Supporting facilities include electrical service and water service.					
11. REQ: NONE ADQT: NONE SUBSTD: NONE PROJECT: Construct an enclosed fuel truck storage building to protect the fuel trucks from the elements.  REQUIREMENT: This project would provide the capability to store fuel trucks in an enclosed storage building instead of outdoors in the open exposed to the weather.					

1. COMPONENT  ARMY	FY 2004 MILITARY CONSTRUCTION PROJECT DATA	2. DATE 11 MAR 2004 02 MAR 2004
3. INSTALLATION AND LOCATION Fort Drum New York		
4. PROJECT TITLE  Fuel Truck Storage Building	5. PROJECT NUMBER  61911	
<p>CURRENT SITUATION: Fuel trucks are stored outdoors, exposed to the weather.</p> <p>IMPACT IF NOT PROVIDED: Fuel truck maintenance and useful life will be negatively affected without adequate protection from the extreme weather conditions at Fort Drum. Additional manpower and expences will be incurred to keep the fuel trucks in good working and ready condition.</p> <p>ADDITIONAL: This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism/force protection measures are included.</p> <p style="text-align: right;">EMORY R. HELTON Colonel, Special Forces Commanding</p> <p>ESTIMATED CONSTRUCTION START:           SEP 2004                           INDEX: 2234 ESTIMATED MIDPOINT OF CONSTRUCTION:   MAR 2005                       INDEX: 2250 ESTIMATED CONSTRUCTION COMPLETION:   SEP 2005                       INDEX: 2267</p>		

# ***Attachment C***

## ***Right of Entry Agreement***

### **DEPARTMENT OF THE ARMY**

#### **FORT DRUM**

#### **RIGHT OF ENTRY FOR CONSTRUCTION**

**THE UNITED STATES OF AMERICA** (the “GRANTOR”), acting by and through the Deputy Assistant Secretary of the Army (I&H) pursuant to a delegation of authority from the SECRETARY OF THE ARMY (the “Army”), hereby grants to COMPANY NAME, hereinafter referred to as the (“GRANTEE”), a Right of Entry for Construction (“Right of Entry”) for the purpose of construction of \_\_\_\_\_ and any other improvements to the Government’s property as set forth in the Exchange Agreement dated \_\_\_\_\_ between the Grantee and Grantor, over , across, in and upon lands of the United States, as identified in **Exhibit “A”** which is attached hereto and made a part hereof, and all hereinafter referred to as the premises.

This Right-of-Entry is subject to the following terms and conditions:

#### **1. TERM**

This Right-of Entry is granted for a term of \_\_\_\_ year(s), beginning \_\_\_\_ 2004, and ending \_\_\_\_\_ 200\_\_, but revocable at will by the Secretary.

#### **2. CONSIDERATION**

The consideration for this Right-of-Entry shall be the mutual benefit to be derived by the parties hereto under the terms and conditions of the Exchange Agreement referenced in the granting clause hereof.

#### **3. NOTICES**

All notices and correspondence to be given pursuant to this Right-of-Entry shall be addressed, if to the Grantee, to \_\_\_\_\_; and if to the Grantor, to the District Engineer, Attn: Chief, Real Estate Division (RE-M), 26 Federal Plaza, Suite 2007, New York, New York, 10278-0090; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

#### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Installation Commander", shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

## **5. SUPERVISION BY THE INSTALLATION COMMANDER**

The use and occupation of the premises shall be subject to the general supervision and approval (which approval shall not be unreasonably withheld) of the Installation Commander hereinafter referred to as said officer, and to such rules and regulations as may reasonably be prescribed from time to time by said officer.

## **6. APPLICABLE LAWS AND REGULATIONS**

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

## **7. CONDITIONAL USE BY GRANTEE**

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises;
- c. subject to other outgrants of the United States on the premises; and
- d. personal to the Grantee, and this Right of Entry, or any interest therein, may not be transferred or assigned.

## **8. CONDITION OF PREMISES**

The Grantee acknowledges for the limited purposes of this Right of Entry, that it has inspected the premises, is generally familiar with its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States except as otherwise provided by law.

## **9. COST OF UTILITIES**

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Grantee, including the Grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.



## **10. PROTECTION OF PROPERTY**

The Grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee, its contractor(s) and its subcontractors under this Right-of-Entry, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee, its contractor(s) or subcontractor(s) incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition reasonably satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the Grantee in an amount necessary to restore or replace the property to a condition reasonably satisfactory to said officer.

## **11. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## **12. RESTORATION**

In the event this Right-of-Entry expires, is revoked or terminated pursuant to the terms hereof, the Grantee shall vacate the premises, remove the property of the Grantee, and restore the premises to a condition reasonably satisfactory to said officer. Thereafter, if the Grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefore, or said officer may cause the property to be removed and no claim for damages against the United States. The Grantee shall also pay the United States on demand any sum which may reasonably be expended by the United States after the expiration, revocation, or termination of this Right-of-Entry in restoring the premises.

## **13. NON-DISCRIMINATION**

The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The Grantee will comply with the Americans with Disabilities Act and Attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

## **14. TERMINATION**

This Right-of-Entry may be terminated by the Grantor upon ten (10) days written notice.

## **15. ENVIRONMENTAL PROTECTION**

**a.** The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this Right-of-Entry. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

**b.** The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's, its contractor(s), subcontractor(s) activities, and the Grantee shall be liable to restore the damaged resources.

**c.** The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**d.** In the event of discovery of any environmental hazard on the premises, the Grantee will immediately report the particulars of such hazard to said officer. Additionally, Grantee will provide said officer with copies of applicable environmental permits and hazardous waste disposal documents.

## **16. HISTORIC PRESERVATION**

The Grantee, its contractor(s), subcontractor(s) shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

## **17. INSURANCE**

**a.** Prior to the commencement of construction of the \_\_\_\_\_, EXCHANGE PARTNER shall require the \_\_\_\_\_ contractor, respectively, to furnish it with a certificate of insurance, naming the Government as an additionally insured, with minimum limits of bodily injury and property damage as follows:

- (1) \$300,000 for each individual;
- (2) \$1,500,000 for each incident involving bodily injury;

- (3) \$500,000 aggregate for all property damage that may be incurred during the term of the policy;
- (4) \$1,500,000 comprehensive general liability umbrella;
- (5) \$3,000,000 builder's risk insurance.

This coverage may be cancelled or automatically expire at such time as the terms and conditions of the Exchange Agreement are fulfilled.

**b.** The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Grantee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Grantee does not have the required insurance coverage.

## **SITE SPECIFIC CONDITIONS**

**18.** The following activities are expressly prohibited unless otherwise authorized in the relevant and executed Exchange Agreement:

- a. drilling wells on the property;
- b. extracting soil borings from the property;
- c. discharging or discarding any materials, trash, waste (liquid or solid), or lab equipment on the property;
- d. interfering with or delaying Government contractors performing on-site activities; and
- e. entering areas of the property without appropriate training and protective personal equipment required by applicable law.

**19.** The Installation Commander or his designee has the right to stop work if he observes unsafe or inappropriate practices.

## **20. DISCLAIMER**

This Right-of-Entry is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this Right-of-Entry does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the water of the United States, pursuant to the

provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**21.** This Right of Entry is issued in contemplation of the Real Estate Exchange as stated in the Exchange Agreement referenced herein.

**THIS RIGHT-OF-ENTRY** is not subject to Title 10, United States Code, Section 2662, as amended. This Right of Entry is part of the Exchange Agreement that was submitted and approved pursuant to Title 10, United States Code, Section 18233, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY: \_\_\_\_\_  
NOREEN DEAN DRESSER  
Chief, Real Estate Division  
New York District, Corps of Engineers  
New York, New York

THIS Right-of-Entry is also executed by the Grantee this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

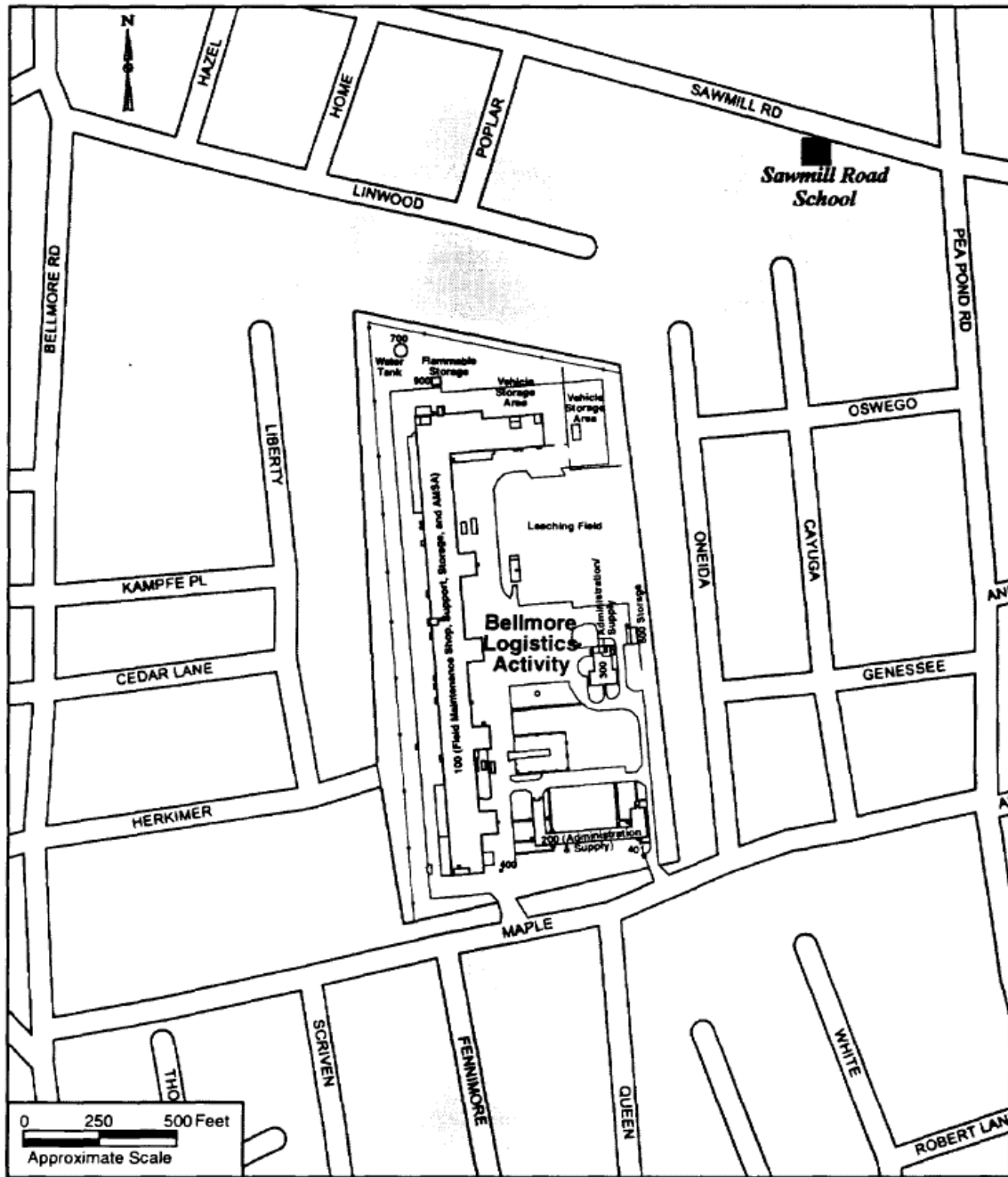
\_\_\_\_ Grantee \_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

***Attachment D***  
***Quality Assurance Plan***

*Appendix 4*  
**Map of Bellmore**



**Site Map**  
**Bellmore Logistics Activity**  
**Long Island, New York**  
**Figure 2-2**

# ***Appendix 5***

## ***Representations and Certifications***

### **TABLE OF CONTENTS**

1. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
2. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS



### **Certificate of Independent Price Determination**

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to --

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before selection of an offeror unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory is the person in the offeror's organization authorized to determine the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

**Certification and Disclosure Regarding Payments to Influence Certain  
Federal Transactions**

(a) The definitions and prohibitions contained in the clause, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989-

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all contract awards associated with any offer submitted by the Offeror and require that all recipients of such contract awards in excess of \$100,000 shall certify and disclose accordingly.

**Certification Regarding Debarment, Suspension, Proposed Debarment, and  
Other Responsibility Matters**

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that-
- (i) The Offeror and/or any of its Principals-
    - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
    - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
    - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
  - (ii) The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

The making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph

(a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the exchange negotiations resulting from this solicitation for default.